



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

CRS
Docket No: 3231-00
27 September 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C. 1552

Encl: (1) Case Summary
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Marine Corps, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected to show a more favorable type of discharge than the undesirable discharge issued on 8 September 1971. He also requests that the reason for discharge and reenlistment code be changed.

2. The Board, consisting of Messrs. Neuschafer, Zs Salman, and Beckett, reviewed Petitioner's allegations of error and injustice on 12 September 2000 and, pursuant to its regulations, a majority determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that enclosure (1) was not filed in timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner reenlisted in the Marine Corps on 31 October 1969 after more than three years of prior active service. It appears that he served in Vietnam from 30 December 1967 to 19 February 1969, participated in 12 combat operations, and was awarded the Purple Heart during his prior enlistment.

d. The record reflects that after returning from Vietnam and

reenlisting, Petitioner received five nonjudicial punishments and was convicted by two summary courts-martial. The offenses included unauthorized absences totalling 16 days, absence from his appointed place of duty on three occasions, and breaking restriction.

e. On 30 June 1971 the commanding officer recommended that Petitioner be separated with an undesirable discharge by reason of unfitness and failure to pay just debts. When informed of the recommendation, he elected to waive his right to present his case to an administrative discharge board. Subsequently, he was convicted by a third summary court-martial of an unauthorized absence of 17 days, absence from his appointed place of duty, disrespect, and appearing in an improper uniform. After review by the discharge authority, the recommendation for separation was approved and Petitioner was discharged with an undesirable discharge by reason of unfitness due to frequent involvement with military authorities on 8 September 1971.

f. Petitioner admits to his misconduct and states he was young and immature at the time. He would like to have the changes made to his discharge for the benefit of his children.

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record a majority of the Board consisting of Messrs. Neuschaffer and Zsalmán, concludes that Petitioner's request warrants partial relief as a matter of clemency, based on his record of service in Vietnam and good postservice conduct. The Board particularly relies on the award of the Purple Heart and good postservice conduct. Consequently, the Board finds that relief in the form of recharacterization to general is appropriate.

Petitioner has also requested that the reason for discharge and his reenlistment code be changed. However, the majority believes that the reason for discharge is appropriate since Petitioner received eight disciplinary actions in a period of less than two years. Further, applicable regulations require the assignment of an RE-4 reenlistment code when an individual is discharged by reason of misconduct. Since Petitioner has been treated no differently than others in his situation, the Board could not find an error or injustice in the assignment code. Therefore, the Board concludes that Petitioner's request for a change in the reason for discharge and his reenlistment code be denied.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

MAJORITY RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was issued a general discharge by reason of unfitness on 8 September 1971 vice the undesirable discharge actually issued on that date.

b. That no further relief be granted.

c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

d. That, upon request, the Veterans Administration be informed that Petitioner's application was received by the Board on 8 May 2000.

MINORITY CONCLUSION:

The minority member of the Board, Mr. Beckett, disagrees with the majority only on the characterization and concludes that no corrective action should be taken. He believes that the Petitioner's Purple Heart and service in Vietnam should not be a mitigating factor since they occurred in his prior enlistment. Mr. Beckett points out that in the enlistment under review of less than two years, Petitioner received five nonjudicial punishments and three summary courts-martial. Included in those eight disciplinary actions were offenses that included more than a month of unauthorized absence, disrespect, and breaking restriction. Further, in addition to the recommendation for an undesirable discharge by reason of unfitness, the commanding officer also recommended Petitioner for separation due to failure to pay just debts. While Petitioner's postservice conduct is good, it is not sufficiently mitigating to overcome his repeated misconduct. Accordingly, Mr. Beckett concludes that corrective action is not warranted.

MINORITY RECOMMENDATION:

That no relief be granted.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder

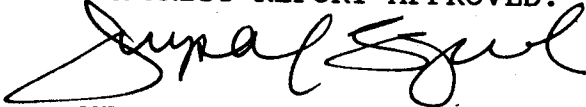


ALAN E. GOLDSMITH
Acting Recorder

5. The foregoing action of the Board is submitted for your review and action.


W. DEAN PFEIFFER

MAJORITY REPORT APPROVED:



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~~MINORITY REPORT APPROVED:~~

JOSEPH G. LYNCH
Assistant General Counsel
(Manpower And Reserve Affairs)